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Bill calls for mandatory groundwater testing before fracking in Wyoming

By ADAM VOGEL Star-Tribune energy reporter

A Wyoming Senate bill sponsored by a Laramie County Democrat aims to curb future debates over sources of groundwater contamination, but a leader of the state's top petroleum trade group says the measure isn't necessary.

Senate File 157, sponsored by Sen. Floyd Esquibel, D-Cheyenne, would mandate baseline groundwater testing prior to all oil and gas development in Wyoming. The tests would provide a "scientifically defensible" account of what groundwater near newly-drilled oil and gas wells was like before the drilling.

The same bill would also give some residents the ability to challenge controversial trade secrets exemptions, allowing landowners and adjacent neighbors the power to challenge for the right to see what chemicals are used in nearby hydraulic fracturing operations.

Esquibel said Tuesday he hopes such testing would help avoid future situations like what's unfolded near Pavillion, where some claim groundwater was contaminated by oil and gas development. Because there wasn't baseline data established before the development occurred, it's difficult to know when and if the water was polluted or what, if any, role the development played.

Esquibel said he's heard recently of increased development in Laramie County, and he'd like to avoid such debates.

"I would certainly want to not get into anything like [Pavillion]," he said. "To the extent we can do advanced planning, discussions, and things of that nature, we'll have more dialogue."

John Robitaille, vice president of the Petroleum Association of Wyoming, said Tuesday that mandating groundwater testing would be premature. Robitaille said his association is polling its members' companies and can preliminarily say that most do so voluntarily.

"In terms of mandating something like that, I'm not sure that's a good idea at this point," he said. "We need to look at it, review it a bit more, and see the benefits and risks, if there are any."

Groundwater issues have been increasingly important to landowner groups like the Powder River Basin Resource Council, which also just released a list of recommended actions to protect groundwater in Wyoming.

"It's a good thing all the way around if we know what our baseline is before oil and gas development starts," Jill Morrison, an organizer for the council, said Tuesday.

Esquibel said he hopes his bill will foster an atmosphere of collaboration and ease tensions created by water concerns.

"We need energy and we need water," he said. "Sometimes it seems like individuals from both sides of the fence look at it from only their perspective. But they're not mutually exclusive."

Individual companies would be responsible for the tests, results from which would be public record. The bill also calls for the state's Environmental Quality Council, a seven-person board appointed by the governor, to promulgate rules mandating the testing.

The language is contained in a bill which also would make into law a series of Wyoming Oil and Gas Conservation Commission rules adopted in 2010. The rules mandate disclosure of materials used in hydraulic fracturing — or “fracking” — an oil and gas production technique in which water, chemicals and sand is pumped into the ground to create breaks in the earth and free stranded resources.

The bill would still let some companies apply for a trade secrets designation, meaning the details of their fracking fluid are not publicly released for fear it would cost the producer a competitive advantage.

But the bill also includes provisions which would allow landowners to challenge those exemptions, potentially gaining access to information about components of fracking fluid used on or near their land.

Esquibel said Tuesday he's still trying to determine what the benefits would be of making already-existing rules into state law. He called it a “discussion type of thing.”

Robitaille also indicated opposition to making the commission rules into law Tuesday. He said that as rules, the measures are more flexible and can be amended more quickly. State law must be changed by the legislature.

The bill wasn't introduced Tuesday, but Esquibel said he expects it to be assigned to the Senate Minerals Committee today. There it would be further dissected and debated.

A similar bill — also introduced by Esquibel — was quickly voted down the last legislative session. The Senator hopes things will go better this time around.

“To the extent we can develop resources and protect public health, the state is better for it,” he said.